

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 1768 - HB 1885**

February 6, 2016

**SUMMARY OF BILL:** Creates a new sentencing enhancement factor if the defendant was illegally present in the United States at the time of the commission of the felony.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$392,800/Incarceration\***

Assumptions:

- The bill creates a new sentencing enhancement factor. Tennessee Code Annotated § 40-35-114 gives judges discretion to enhance sentences. Though broad, the enhancement factor will only impact a few cases.
- The factor could apply to any felony committed by someone illegally present in the United States at the time the felony was committed. Fiscal Review cannot reasonably determine which felonies would be enhanced. However, it is reasonable to assume that one Class E felony offense, one Class D felony offense, one Class C felony offense, and one Class B felony offense will be enhanced each year.
- The average time served for felony offenses is as follows:
  - Class A felony – 17.35 years;
  - Class B felony – 6.59 years;
  - Class C felony – 3.22 years;
  - Class D felony – 2.32 years; and
  - Class E felony – 1.47 years.
- It is assumed that the affected offenses will be enhanced one classification.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2016 is \$67.73.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount applies, but due to the low number of admissions impacted by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- The bill will result in the Class B offender serving an additional 10.76 years (17.35 – 6.59), or 3,930.09 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based

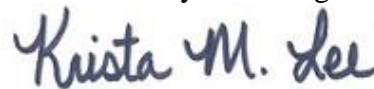
on one offender serving an additional 10.76 years (3,930.09 days) for a total of \$266,185.00 (\$67.73 x 3,930.09 days).

- The bill will result in the Class C offender serving an additional 3.37 years (6.59 – 3.22), or 1,230.89 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 3.37 years (1,230.89 days) for a total of \$83,368.18 (\$67.73 x 1,230.89 days).
- The bill will result in the Class D offender serving an additional 0.9 years (3.22 – 2.32), or 328.73 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 0.9 years (328.73 days) for a total of \$22,264.88 (\$67.73 x 328.73 days).
- The bill will result in the Class E offender serving an additional 0.85 years (2.32 – 1.47), or 310.46 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 0.85 years (310.46 days) for a total of \$21,027.46 (\$67.73 x 310.46 days).
- The total increase in incarceration costs is \$392,845.52 (\$266,185.00 + \$83,368.18 + \$22,264.88 + \$21,027.46).
- The bill will not create any new cases. It is assumed that the courts, district attorneys, and public defenders can handle any impact within their existing resources. The Administrative Office of the Courts, District Attorneys General Conference, and the District Public Defenders Conference confirms that any impact can be handled within their existing resources.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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